IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7914 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITHALBHAI SHAMJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7914 of 1995

MR MB PARIKH for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner is carrying on business at village Vavadi, Taluka Jamkandorana, Dist. Rajkot. On 7th

January 1993, the Truck bearing Regn. No. GTZ-9146 was checked by the Mamlatdar, Jamkandorana, Dist. Rajkot, wherein the Mamlatdar seized 197 bags of groundnut. The petitioner was issued with a show cause notice dated 6th February 1993. The petitioner filed his explanation on 15th February 1993 and subsequently, the Deputy Collector, Rajkot, issued the show cause notice on 21st June 1993.

2. The Deputy Collector, after hearing the petitioner, passed an order on 2nd July 1993 at Annexure.B to the petition and disbelieved the case of the petitioner. The Deputy Collector has released the Truck but has confiscated the complete quantity of the groundnut of 197 bags (total weight: 6699 kg.) valued at Rs.66,980/-. The petitioner preferred revision before the State Government, which came to be dismissed by the State Government by order dated 29th August 1995 and the Joint Secretary has confirmed the order of the Deputy Collector dated 2nd July 1993.

3. I have heard learned Advocate Mr.Parikh for the petitioner. Mr.Parikh contended that the penalty imposed of confiscation of the complete 100% goods is disproportionate to the allegations levelled against the petitioner. Mr.Parikh has relied upon the judgment of this Court in the case of Laxmi Oil Mills and Industries v. State of Gujarat and anr., reported in 1987 (2) GLH (UJ) 33 wherein in similar fact-situation, the Court has reduced the penalty and therefore, in the present case also, the penalty may be reduced from 100% to any other appropriate quantum.

4. The judgment relied upon by the petitioner is not applicable to the facts of the present case in view of the fact that the findings recorded by both the authorities are that the petitioner has tried to file false or concocted affidavit contrary to the statement recorded of the driver. The Deputy Secretary has come to the conclusion that there is no reason for the driver to state false facts at the time of seizure.

5. Apart from that, in view of the reported judgment of this Court in the case of M/s.Govind Karsan and Co. v. State & anr., reported in 1983 (1) GLR 145, wherein this Court has held that no leniency should be shown to the persons who are committing serious breach of the statutory regulations and who have failed to maintain proper register and other required regulations.

6. I have gone through the orders of the Deputy

Collector and the Deputy Secretary. The findings regarding the statement of the driver recorded at the time of seizure and the subsequent affidavit of the so-called agriculturist was not accepted by the authority. Prima facie, the view taken by both the authorities is just and proper and no interference is called for by this Court in discretionary jurisdiction under Articles 226 and 227 of the Constitution of India.

7. In the result, the petition is dismissed. Rule is discharged, with no order as to costs.

(K.S. Jhaveri, J.)

Sreeram.